IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5082 OF 2005

Shivaji Ganesh Naidu ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.A.P.Mundargi i/b Mr.Marwadi for the Applicant
Mr.A.S.Gadkari, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 12,2005

P.C.:

1. Heard Counsel appearing for the Applicant and the learned A.P.P. for State. An order was passed under Section 156(3) of the Code of Criminal Procedure,1973 on a private complaint filed by the complainant. F.I.R. is registered by the police. In the F.I.R. it is recorded that the complainant executed a gift deed in respect of a shop in question in favour of the Applicant. The grievance of the complainant seems to be that some consideration was to be paid under the gift deed which was not paid by the Applicant. The offence alleged is that certain documents viz. transfer forms were submitted by the Applicant to the society by forging the signature of the complainant and the transfer has been effected on the basis of the said forms and other forged documents.

2. The learned Advocate for the applicant submitted that the dispute is essentially of civil nature and custodial interrogation is not required. The learned A.P.P. submitted

that the report of handwriting expert is called for which shows that the signature on the documents in question are forged. He submitted that the custodial interrogation of the Applicant is required.

3. At this stage, it appears to me that the execution of registered gift deed by the complainant in favour of the Applicant is an admitted position. The complainant is the real brother of the Applicant. The recitals in the registered gift deed disclose that the gift deed was executed out of natural love and affection. From the F.I.R. registered by the police it is apparent that the complainant is admitting execution of the gift deed. If execution of the gift deed is admitted, the transfer of the property in the name of the Applicant is a natural consequence thereof. Considering the nature of the allegations made in the private complaint filed by the complainant, this is not the case where custodial interrogation of the Applicant is required. The prosecution is already possessing alleged admitted signature of the Applicant on the basis of which the opinion of the handwriting expert has been obtained. A case is made out for grant of anticipatory bail.

4. Hence I pass the following order :

i) In the event of the arrest of the Applicant in connection with C.R.No.274 of 2005 registered with Andheri Police Station, Mumbai the Applicant shall be enlarged on bail

subject to furnishing P.R.Bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicant will attend the concerned Police Station as and when called upon to do so till filing of the charge sheet and will cooperate for the purposes of investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE